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833 Central Owners Corp. and Local 621, United Workers of America. Case 29–CA–070910

October 30, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND SCHIFFER

On February 13, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB No. 66. Thereafter, the General Counsel filed an application for enforcement in the United States Court of Appeals for the Second Circuit, and the Respondent filed a cross-petition for review.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein. Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB No. 66, which is incorporated herein by reference. The judge's recommended Order, as further modified herein, is set forth in full below.¹

ORDER

The National Labor Relations Board orders that the Respondent, 833 Central Owners Corp., Far Rockaway,

¹ In modifying the judge's recommended Order to require the Respondent to make whole Ezra Shikarchy for any adverse tax consequences of receiving his backpay in a lump sum, and to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters, we rely on *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

We shall substitute a new notice in accordance with *Durham School Services*, 360 NLRB No. 85 (2014).

New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge or other reprisals if they support the Union or engage in union activities.

(b) Impliedly promising benefits to employees in order to discourage them from supporting the Union or engaging in union activities.

(c) Warning, suspending, discharging, or otherwise discriminating against employees because of their support for and activities on behalf of the Union or any other labor organization.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Ezra Shikarchy full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Ezra Shikarchy whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the judge's decision.

(c) Compensate Ezra Shikarchy for any adverse income tax consequences of receiving his backpay in one lump sum, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings, suspension, and discharge of Ezra Shikarchy, and within 3 days thereafter, notify him in writing that this has been done and that the warnings, suspension, and discharge will not be used against him in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Far Rockaway, New York facility copies of the at-

tached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 2011.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 30, 2014

Mark Gaston Pearce, Chairman

Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, concurring.

I agree that the Respondent violated Sections 8(a)(3) and (1) of the Act as found by the judge for the reasons stated in the judge's decision, and I join in issuing the Order set forth above. I also agree that there is no basis

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

for reversing the judge's credibility findings. Accordingly, I concur.

Dated, Washington, D.C. October 30, 2014

Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discharge or other reprisals if you support the Union or engage in union activities.

WE WILL NOT promise you benefits in order to discourage you from supporting the Union or engaging in union activities.

WE WILL NOT warn, suspend, discharge, or otherwise discriminate against you because you support the Union or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Ezra Shikarchy full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Ezra Shikarchy whole for any loss of earnings and other benefits resulting from his suspension and discharge, less any net interim earnings, plus interest.

WE WILL compensate Ezra Shikarchy for any adverse income tax consequences of receiving his backpay in one lump sum, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful warnings issued to, suspension of, and discharge of Ezra Shikarchy, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the warnings, suspension, and discharge will not be used against him in any way.

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The Board's decision can be found at <http://www.nlr.gov/case/29-CA-070910> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

